

July 26, 2019

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th St. – 6th Floor
Austin, Texas 78701

RE: Public Information Requests – **Request for Opinion & Transmittal Letter**

Honorable Attorney General:

The Irving Police Department has received a request for information, portions of which fall within exceptions to required disclosure under the Texas Public Information Act. The Department has released the uncontested materials and withheld contested information requesting an opinion from your office holding that the withheld information is excepted from mandatory public disclosure. There has been no previous determination that the requested information falls within one of the exceptions under Subchapter C of the Act.

The present request for information, included with this correspondence and marked as Exhibit A, was made by:

77190-58522906@requests.muckrock.com on behalf of Samuel Sinyangwe.

A copy of the request is attached hereto as Exhibit A; the requestor requested the following:

1. The total number of police use of force incidents, broken down by type of force used, between 2013-2018 (separated by year).
2. The total number of people that police used force against, between 2013-2018 (separated by year).
3. A copy of all complaints reported by civilians against police between 2013-2018.
4. A copy of any documents indicating whether the civilian complaints identified in request #3 were sustained.
5. The policy manual of the police department.
6. The current union contract between the city and any police unions or police associations.
7. All records regarding police shootings (including fatal police shootings, non-fatal police shootings and police shootings at a civilian that missed) between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident, the names of all officers involved, whether administrative investigations found the incidents to be justified under police department policy and any disciplinary actions taken against the officers as a result of the incident.

8. All records regarding civilian deaths or serious injuries resulting from police use of force between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident and the names of all officers involved.

The request was received July 12, 2019, a date within 10 business days of this request for opinion.

The City has provided the requestor with a written statement that it wishes to withhold the materials sought in points number 3, 4, 7 and 8, and asked for a decision from the attorney general about whether the information is within an exception to public disclosure, as well as a copy of the governmental body's written communication (without enclosures) to the attorney general asking for the decision. [(552.301(d)(1) & (d)(2))]. The City will provide requestor with the information sought in points number 1, 2, and 5. There are no records responsive to point # 6.

The contested records are voluminous, almost certainly numbering in the thousands of pages; example copies of the records sought in points # 3, 4, 7 & 8 are enclosed herewith as Exhibit B pursuant to Tex. Gov't. Code 552.301(e)(1)(D). The City asserts that the withheld records are excepted from mandatory disclosure pursuant to the following exception:

Tex. Gov't. Code Sections 552.101 & Local Gov't Code Section 143.089(g), and 552.108(a)(2).

ARGUMENTS –

3. A copy of all complaints reported by civilians against police between 2013-2018 &

4. A copy of any documents indicating whether the civilian complaints identified in Request # 3 were sustained.

Complaint and investigation records pertaining to internal investigations regarding charges against police officers that do not result in the types of disciplinary action defined by chapter 143 of the Local Government Code, are maintained only in the police department's internal files as authorized under [section 143.089\(g\) of the Local Government Code](#)

[Section 552.101 of the Government Code](#) excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”. This exception encompasses information that another statute makes confidential. It applies in conjunction with [section 143.089\(g\)](#), Local Gov't Code because the City of Irving is a civil service city under

Chapter 143 of the Local Government Code. Chapter 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. See [Local Gov't Code § 143.089](#)(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* [§ 143.089](#)(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by [section 143.089](#)(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under [section 143.089](#)(a). See [Abbott v. Corpus Christi](#), 109 S.W.3d 113, 122 (Tex. App.--Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under [section 552.101 of the Government Code](#) in conjunction with [section 143.089 of the Local Government Code](#). See [Local Gov't Code § 143.089](#)(f); Open Records Decision No. 562 at 6 (1990). *However, information maintained in a police department's internal file pursuant to [section 143.089](#)(g) is confidential and must not be released.* [City of San Antonio v. Tex. Attorney Gen.](#), 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). See OR2008-11462, (WL 3997618.)

7. All records regarding police shootings (including fatal police shootings, non-fatal police shootings and police shootings at a civilian that missed) between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident, the names of all officers involved, whether administrative investigations found the incidents to be justified under police department policy and any disciplinary actions taken against the officers as a result of the incident. &

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8. All records regarding civilian deaths or serious injuries resulting from police use of force between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident and the names of all officers involved.

[Section 552.108\(a\)\(2\) of the Government Code](#) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. [Gov't Code § 552.108\(a\)\(2\)](#). A governmental body claiming [section 552.108\(a\)\(2\)](#) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See [id. §§ 552.108\(a\)\(2\)](#), .301(e)(1)(A). The department states the submitted information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. See *OR2016-19605* (WL 4730412.) None of the records responsive to requests # 7 & 8 resulted in a conviction or deferred adjudication, thus 552.108(a)(2) applies.

PRAYER- The City of Irving respectfully requests an opinion from your office holding that the records requested in requests # 3 & 4 are excepted from required disclosure pursuant to Gov't Code Section 552.101 and Local Gov't Code Section 143.089(g), and that the reports requested in requests # 7 & 8 are excepted from required disclosure pursuant to Gov't Code Section 552.108(a)(2) all the reports and associated audio/video files are excepted from required disclosure by the provisions found at Gov't Code 552.108(a)(1) &(a)(2) consistent with prior opinions from your office cited herein.

Respectfully submitted,

Les Moore
Police Legal Adviser
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061
972-721-2543
LM/lg

Encl: Exhibit A (requests for information)
Exhibit B (responsive document examples)

cc: (w/o enclosures)

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